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## OFFICE OF THE CITY CLERK

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# REPORT

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**TO THE HONORABLE MAYOR AND CITY COUNCIL**

DATE: June 15, 2005

REPORT NO.: 05-05

SUBJECT: SCHEDULING A RUN – OFF ELECTION FOR MAYOR

### ISSUE

At the City Council meeting on May 2, 2005, the City Clerk was directed to return at a later date, to discuss the issue of scheduling a run-off election for Mayor. This was suggested because of the possibility that the governor would call a special statewide election for November 8, 2005, in which case the run-off election could be consolidated with that election for cost savings. As you are aware, the Governor has now called the special statewide election. Therefore, the City Council has the option to consolidate the run-off election with that special election.

Alternately, the Council may call a stand-alone run-off election. We have learned from the Registrar of Voters, however, that the 49-day timeframe for scheduling a special run-off election, which is contained in the Municipal Code, is not feasible. Therefore, if a stand-alone election is called, the Clerk would recommend that it be held on September 27, 2005. This is 63 days after the July 26 special primary election and allows the Registrar sufficient time to adequately prepare for the election.

As you are aware, the Registrar of Voters has estimated that a stand-alone city-wide election will cost nearly \$3 million. After conferring with the Registrar this past week, it is clear there would be substantial cost savings if the city were to consolidate with the November 8 special statewide election. The county's cost estimate for the election on November 8 is \$6.5 million. There are currently three statewide measures which have qualified for the ballot and others are pending. There could be as many as 8 statewide measures. Costs are pro-rated among participating jurisdictions in a consolidated election. Therefore, even if there are only three statewide measures on the November 8 ballot, the Registrar estimates that the city's portion of the election costs would be under \$1 million. With 6 statewide measures on the ballot, the city's costs would be closer to \$500,000. This is a potential cost savings of \$2.5 million. Because of these substantial savings, the City Clerk is recommending the city consolidate a run-off election, if needed, with the statewide special election.

## BACKGROUND

The City Charter outlines procedures for filling a vacancy in a Council Office in Section 12 and for filling a vacancy in the Office of the Mayor in Section 24. Charter Section 12, amended by the voters in 1994, specifies in pertinent part:

If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

Charter Section 24, related to filling a vacancy in the office of the Mayor, is much less specific and states:

In the event of a vacancy occurring in the office of the Mayor, existing by reason of any cause, the Council shall have authority to fill such vacancy, provided, however, that if the Council shall fail to fill such vacancy by appointment within thirty (30) days after the vacancy, the Council must immediately cause an election to be held to fill such vacancy. Any person appointed to fill such vacancy, shall hold office only until the next regular municipal election, at which date a person shall be elected to serve for the remainder of such unexpired term.

In 1999, the City Clerk's Office initiated a comprehensive update to the City's election code, Chapter II, Article 7 of the San Diego Municipal Code. While individual sections had been amended over the years, there had been no comprehensive review and update of the code for the 31 years it had been in place. It was our intent at that time to initiate changes because of changes in state law, to make our municipal code provisions more comprehensive, and to clarify procedures. As a part of this update, the City Clerk proposed amendments to the Municipal Code related to filling vacancies. The amendments were adopted on 7/26/99 by the City Council as Ordinance O-18664 and amended on 9/10/01 by the City Council as Ordinance O-18979.

The Municipal Code amendments adopted by the City Council in 2001 were specifically designed to articulate procedures for filling a vacancy in the Office of the Mayor or the City Attorney. In order to provide some consistency in filling vacancies, these amendments were based on the language contained in Charter Section 12. Because these provisions are contained only in the Municipal Code, however, the City Council has the authority to amend them by ordinance. In this instance, the City Council may adopt an ordinance to call a special run-off election to be held on September 27, or to consolidate with the special statewide election which will be held on November 8, 2005.

## DISCUSSION

Charter Section 10, relating to city elections, specifies that unless a candidate receives a majority vote in the primary election, a run-off election will be held. Charter Section 12, related to filling a vacancy in the office of the City Council, adheres to this same standard, as does Municipal Code Section 27.0906. Therefore, if no candidate receives a majority vote at the Special Mayoral Election on July 26, 2005, a special run-off election will need to be held and the two candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the candidates for the vacant seat and their names shall be printed on the ballots to be used at the run-off election.

Although Municipal Code Section 27.0906 specifies that the run-off election is to be held 49 days after the special primary election, it has become clear in discussions with the Registrar of Voters that this timeline is not really workable for a city-wide election. Changes in voting systems and voting patterns and the logistics of running such a large election necessitate that there be more time between the primary and the run-off. A shorter timeframe could jeopardize the integrity of the election.

Under state law, the Registrar of Voters has 28 days to complete the canvass of returns following any election. The increasing use of absentee ballots by voters, and a growing tendency return them to the polls on Election Day, has resulted in election results being processed several days following the day of the election. Additionally, the city has had a number of extremely close elections in the recent past. If an election is close, it may take the full 28 days to determine which candidates would participate in a run off election. With only 49 days between a primary and a run-off, if this were to be the case, it would result in only 21 days for typesetting, translation and printing of ballots for the election. This factor, in and of itself, is sufficient to suggest the need to allow more time between a city-wide primary and a city-wide run-off election.

Additionally, state law allows voters to cast their ballots beginning 29 days before an election. Also, in accordance with the Federal Voting Rights Act and a recent agreement with the Department of Justice, ballots in San Diego County must be translated and provided in Spanish, Tagalog and Vietnamese. The result is the need for a significantly longer time period to prepare and print ballots.

Given the factors discussed above, the City Clerk recommends that the City Council consolidate a Special Mayoral run-off election, if needed, with the statewide special election on November 8, 2005. Alternately, the City Clerk recommends that the Council call a stand-alone run-off election to be held on September 27, 2005, 63 days after the special primary election. Either action could be accomplished with the adoption of an election ordinance specifying that a special run-off election could be consolidated with a special statewide election, or calling a stand-alone run-off election for September 27, 2005. In the near future, the City Clerk will also prepare amendments to the Municipal Code to codify provisions consistent with the longer timeframe, for filling vacancies in the office of the Mayor or the City Attorney.

## SUMMARY

The City Clerk will present this report to the City Council on June 21 for consideration of scheduling a special run-off election for Mayor. The governor has called a special statewide election for November 8, 2005. Therefore, a special run-off election could be consolidated with that statewide special election. Alternately, the City can call a stand-alone run-off election. Although the Municipal Code now specifies that this run-off election would be scheduled 49 days after the special primary election, or September 13, 2005, we have learned from the Registrar of Voters that this 49 day timeframe is not realistic. Therefore, the Clerk would recommend that such a stand-alone election be held on September 27, 2005.

The City Clerk recommends that that the special run-off election, if needed, be consolidated with the statewide special election scheduled for November 8, 2005, because of the significant cost savings. Please feel free to contact me or Assistant City Clerk Joyce Lane if you have any questions about this matter.

Charles G. Abdelnour

City Clerk

CGA: JL

cc: City Attorney  
City Manager